LIBRARY
SUPREME COURT, U. S.

FILED
FEB 4 1971
R. ROBERT SHAW, CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 712

TRIANGLE IMPROVEMENT COUNCIL, et al.,
Petitioners,

vs.

WILLIAM S. RITCHIE, COMMISSIONER,
STATE ROAD COMMISSION
OF THE STATE OF WEST VIRGINIA, et al.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals
for the Fourth Circuit

Brief Amicus Curiae of the National Housing and Economic Development Law Project

J. ANTHONY KLINE
KENNETH F. PHILLIPS
Earl Warren Legal Institute
University of California
Berkeley, California 94720

SORG PRINTING COMPANY OF CALIFORNIA, 346 FIRST STREET, SAN FRANCISCO 94105

SUBJECT INDEX

	Page
The Interest of Amicus Curiae	1
Summary of Argument	4
Introduction	5
Argument	19
I. The Federal Relocation Requirements Apply to Benefit and Protect All Residents of a Federal-Aid Highway Project Not Yet Displaced on the Date of Their Enactment	19
II. In the Absence of a Satisfactory Relocation Plan, Evidence of a State Highway Department's Ability to Provide Adequate Replacement Housing for Particular Displacees Is Factually and Legally Irrelevant	27
Conclusion	33

TABLE OF AUTHORITIES CITED

Cases	Pages
Block v. Hirsh; 256 U.S. 135,	25
Concerned Citizens for the Preservation of Clarksville v. Volpe, No. 30286 (5th Cir.)	2
D.C. Federation of Civic Associations v. Volpe, 316 F.Supp. 754 (D.D.C. 1970)	20, 26
D.C. Federation of Civic Associations v. Volpe, Civil No. 23,870 (D.C. Cir. April 6, 1970)	24, 25
Garrett v. City of Hamtramck, No. 32004 (E.D. Mich. S.D., March 7, 1969)	28
Lathan v. Volpe, No. 8986 (W.D.Wash. 1970)	2
Northeast Welfare Rights Organization v. Volpe, No. 3437, (E.D. Wash. 1970)	3
Norwalk CORE v. Norwalk Redevelopment Agency, 395 F. 2d 920, (2d Cir. 1968)	4, 14, 19, 28
Powelton Civic Home Owners Association v. Dept. of Housing and Urban Dev., 284 F. Supp. 809 (E.D. Pa. 1968)	14, 19, 28, 29
Shapiro v. Thompson, 394 U.S. 618	25
Talbot v. Romney, No. 2402 (S.D.N.Y., August 20, 1970)	28
Tenants and Owners in Opposition to Redevelopment v. Romney, No. C-69-324 (N.D. Cal. April 29, 1970)	19, 28, 29
Thorpe v. Housing Authority of the City of Durham, 393 U.S. 268	24
Western Addition Community Organization v. Weaver, 294 F. Supp. 433 (N.D. Cal. 1968)	14, 19, 27, 28

STATUTES

	Pages
California Streets and Highways Code, §§ 135.3-135.6	6
Cal. Stats. 1965 res. ch. 130, p. 5,289	6
Public Law 89-574, 89th Cong., Sept. 13, 1966	7
Public Law 89-560, 78 Stat. 769, 786	18
23 U.S.C.:	
§ 133(e)	22
§ 501 et seq.	9
§ 501	10, 22
§ 502(1)	11
§ 502(2)	11
§ 502(3)	11
§ 508(a)	12
§ 510(a)(b)	12
§ 1455(c)	28
42 U.S.C.:	
§ 1455(c)(1)	11
§ 1455(f) and (h)	22
§§ 2711 et seq.	1
§ 3307(a)	28
49 U.S.C. § 1606(a)	28

TEXTS AND OTHER AUTHORITIES

Pages

Anderson, The Federal Bulldozer: A Critical Analysis of Urban Renewal, 1949-1962 (MIT Press 1964) 14

CCH Urban Affairs Reports, ¶ 18,675 17

Fried, Grieving for a Lost Home: Psychological Costs of Relocation, in Urban Renewal: The Record and the Controversy (J. Wilson, ed. 1966) at 359 5

Greer, Urban Renewal and American Cities (Bobbs-Merrill, 1965) 14

Hartman, The Housing of Relocated Families, 30 J. Am. Inst. Planners 266 (1964) 5

Hearings before the Subcommittee on Intergovernmental Relations of the Committee on Government Operations, U.S. Senate, on S.1, the Uniform Relocation Assistance and Land Acquisition Policies Act of 1969, U.S. Senate, 91st Cong., 1st Sess., p. 216 8

Hearings before the Subcommittee on Intergovernmental Relations of the Committee on Government Operations, U.S. Senate, on S.698, S.735, S.458 and S.2981, 90th Cong., 2nd Sess., pp. 425-427 9

Hearings before the Subcommittee on Roads of the Committee on Public Works, U.S. House of Representatives, 90th Cong., 2nd Sess., on H.R. 17134 and Related Bills, May 23, 1968, pp. 234-235 14

Hearings before the Subcommittee on Roads of the Committee on Public Works, House of Representatives, 91st Cong., 2nd Sess., on H.R. 16788 and related bills, p. 948 ..... 15, 16, 17, 20

Hearings before the Committee on Public Works, House of Representatives, 91st Cong., 1st and 2nd Sess., on H.R. 14898, H.R. 14899, S.1 and related bills 12, 13

Highway Relocation Assistance Study; 90th Cong., 1st Sess., Committee Print No. 9 (1967) pp. 3-6 ..... 3, 6, 7, 8, 22, 32

The Legal Lawbreakers: A Study in Official Lawlessness Regarding Federal Relocation Requirements, Citizens Advocate Center (Washington, D.C., July, 1970) 5, 13

Pages

Manvel, Housing Conditions in Urban Poverty Areas, report prepared for the National Commission on Urban Problems, Research Report No. 9 (Wash., D.C. 1968), Table 8, pp. 14-19 33

Memorandum of Secretary of Department of Transportation: Implementation of Replacement Housing Policy, January 15, 1970 15

National Commission on Urban Problems, Building the American city (1968), p. 112 ..... 3, 6

1 Nichols, Eminent Domain § 1.22 [2] (1964) 5

Note, The Interest of Rootedness: Family Relocation and an Approach to Full Indemnity, 21 Stan. L. Rev. 810, 803-804 (1969) 6

Note, Urban Renewal: Problems of Minimizing and Preventing Urban Deterioration, 71 Harv. L. Rev. 504 (1959) 14

Panuch, Relocation in New York City (1959) 6

Report of the Committee on Public Works, U.S. Senate, to accompany Senate Bill No. 3418, the Federal-Aid Highway Act of 1968. Report No. 1340, 90th Cong., 2nd Sess., June 28, 1968, pp. 5-7 ..... 10, 20, 21

Report to the Congress by the Comptroller General of the United States: Opportunity to Improve Allocation of Program Funds to Better Meet the National Housing Goal (October 2, 1970) 14

Report, together with Minority Views, of the Committee on Public Works, House of Representatives, to accompany H.R. 17134, 90th Cong., 2d Sess., House Report No. 1584, p. 57 31

Roberts, Highway Relocation Planning and Early Judicial Review, 7 Harv. Jour. on Legis. 179, 180 (1970) 13, 19

Select Subcommittee on Real Property Acquisition, Committee on Public Works, House of Representatives, 88th Cong., 2d Sess., Study of Compensation and Assistance for Persons Affected by Real Property Acquisition in Federal and Federally Assisted Programs (Comm. Print 1964) 6

Tondro, Urban Renewal Relocation: Problems in the Enforcement of Conditions on Federal Grants to Local Agencies, 117 U. Pa. L. Rev. 183 (1968) 14, 17, 19

U.S. Advisory Commission on Intergovernmental Relations, Relocation: Unequal Treatment of People and Businesses Displaced by Governments (1965) 6

U.S. Dept. of Commerce, Commerce Today, Table "1970 Preliminary Population Count", October 19, 1970, p. 25 32

Wall Street Journal: February 17, 1970, p. 4, col. 2 ..... 14, 15
April 7, 1970, p. 1, col. 1 15

In the Supreme Court of the United States

OCTOBER TERM, 1970

No. 712

TRIANGLE IMPROVEMENT COUNCIL, et al.,
Petitioners,

vs.

WILLIAM S. RITCHIE, COMMISSIONER,
STATE ROAD COMMISSION
OF THE STATE OF WEST VIRGINIA, et al.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

Brief Amicus Curiae of the National Housing and Economic Development Law Project

THE INTEREST OF AMICUS CURIAE

The National Housing and Economic Development Law Project was established in 1968 as a component of the Earl Warren Legal Institute at the University of California at Berkeley. It is funded and sponsored by the Legal Services Division of the Office of Economic Opportunity pursuant to the Economic Opportunity Act. 42 U.S.C. §§ 2711 *et seq.* The chief function of the Project is to serve as a resource for the approximately 265 Legal Services projects in the country, which are staffed by more than 1800 attor-

neys. These attorneys advise and represent approximately 500,000 low-income clients annually.

Attorneys with the National Housing and Economic Development Law Project assist these neighborhood lawyers in helping their clients in the areas of federally subsidized housing programs, private landlord-tenant relations, federal urban programs, low-income housing production, community economic development and other matters relating to housing and urban affairs. In addition to assistance in individual cases, the Project attempts to further the development of the law in the area of housing and urban affairs towards an increasing recognition of the rights and needs of low-income persons in the United States.

Since its inception the Project has assisted neighborhood lawyers in negotiations with Federal and State highway officials in connection with the planned construction of federal highways which threaten to destroy low-income communities in twelve cities in eight states. In several instances the Project has become co-counsel in relocation suits such as that here presented, where such litigation was deemed necessary by local counsel and their clients. Two of such suits, which arose in Austin, Texas[1] and Seattle, Washington,[2] and are now respectively pending appeal in the United States Courts of Appeals for the Fifth and Ninth Circuits, present factual issues which are in important respects virtually identical to those here presented. Indeed, in every dispute between an impoverished local community to which amicus is providing assistance and State and Federal highway officials, the material facts are simply a variation of those which occurred in Charleston.[3]

---

1. *Concerned Citizens for the Preservation of Clarksville v. Volpe*, No. 30286 (5th Cir.) (pending decision)

2. *Lathan v. Volpe*, No. 8986 (W.D.Wash. 1970) (as yet undocketed in the United States Court of Appeals for the Ninth Circuit; Notice of Appeal filed on November 27, 1970.)

Highway projects initially underway in cities across the country, which collectively will cause the displacement of thousands of impoverished families and individuals, are in the same posture as the project involved in this appeal; that is, although displacement has still not occurred, certain preliminary authorizations were obtained from the Department of Transportation (DOT)[4] prior to enactment of the Federal-Aid Highway Act of 1968 or regulations promulgated thereunder. Whether these prospective displacees, who were intended to benefit from the 1968 legislation, will nevertheless be victimized by state highway departments, may well depend upon the outcome of this appeal.

That this appeal presents a question of substantial importance to the low-income persons served by the Project is further established by statistical evidence which indicates that in recent years the Federal-Aid Highway Program has probably destroyed more truly low-cost housing than has been built by the public housing program during a comparable period.[5] As will be shown in this brief, investigations

---

3. E.g., *Northeast Welfare Rights Organization v. Volpe*, No. 3437, (E.D. Wash. 1970) (federal-aid highway project in Spokane, Washington.)

4. Although numerous functions of the DOT relative to federal-aid highways are performed by its constituent agencies, such as the Federal Highway Administration and Bureau of Public Roads, for purposes of simplification this brief will refer only to the DOT.

5. During the 18 month period from April 1, 1965 to October 1, 1966, the homes of 49,605 families and individuals were destroyed as a result of federal-aid highway construction. The majority of the housing destroyed was "midrange or lower cost housing." *Highway Relocation Assistance Study*, a study transmitted by the Secretary of the Department of Transportation to the Congress as required by the Federal-Aid Highway Act of 1966, 90th Cong., 1st Sess., Committee Print No. 9 (1967) pp. 3-6. During 1965 and 1966 the federal government commenced the construction of only 23,000 units of public housing annually, or 34,500 on an 18 month basis. National Commission on Urban Problems, *Building the American City* (1968), p. 112.

and reports by Congress and independent organizations have disclosed that, even where the applicability of relocation requirements is unquestioned, they have been largely ignored by the state and federal agencies charged with their implementation. Thus, in clear violation of Congressional mandate, public highway officials are exacerbating a national housing crisis which has severest consequences for the poor generally and the racially oppressed in particular.[6]

SUMMARY OF ARGUMENT

As the briefs of the parties fully set forth the facts and proceedings below, amicus will not repeat them here. Briefly stated, and only insofar as the merits are concerned, the United States District Court for the Southern District of West Virginia, in a decision[7] which was affirmed without opinion by the United States Court of Appeals for the Fourth Circuit,[8] dismissed the complaint on two grounds: first, that the statutes and implementing regulations enacted and promulgated in 1968 were inapplicable since DOT approval of acquisition of the right-of-way for the I-77 project was granted prior to 1968; and, second, that in

---

6. As stated in *Norwalk CORE v. Norwalk Redevelopment Agency*, 395 F. 2d 920, (2d Cir. 1968):

> The specific problem is not that non-white displacees are, on the average, poorer than white displacees. That may be so, but it is a more general problem. What we are concerned with is that discrimination which forecloses much of the housing market to some racial groups, thereby driving up the price they must pay for housing. The situation is made worse by the fact that most people displaced by urban renewal are non white. 395 F. 2d at 931.

7. 314 F.Supp 20 (S.D.W.Va., 1969)

8. 429 F.2d 423 (4th Cir. May 14, 1970). Rehearing en banc was denied on July 14, 1970. Judge Sobeloff, joined by Judge Winter, filed a dissenting opinion. *Id.*

any event, adequate replacement housing, on an open racial basis, will be available in Charleston for the orderly relocation of persons displaced by the highway project.

Amicus will not reiterate the forceful arguments presented in petitioners' brief and in the dissenting opinion of Judge Sobeloff; rather it will primarily confine itself to a demonstration that in view of the history of the federal-aid highway program and the legislative activities which culminated in the Federal-Aid Highway Act of 1968, Congress did not intend to suspend application of that Act to projects like I-77. As will be shown, non-application of this Act in the present case would have negative effects nationally which should not be allowed to occur in the absence of explicit Congressional mandate. Amicus will also show that the considerations which were relied upon by the district court were inappropriate and not the statutory criteria.

INTRODUCTION

The history of relocation assistance is replete with the failures of government programs to minimize the terrible impact of forced displacement upon the families and individuals involved.[9] Relocation assistance was unnecessary when few displacements occurred and when condemnations involved predominantly unimproved land.[10] But with the

9. See, *The Legal Lawbreaker: A Study in Official Lawlessness Regarding Federal Relocation Requirements*, Citizens Advocate Center (Wash., D.C., July, 1970) and Fried, *Grieving for a Lost Home: Psychological Costs of Relocation*, in URBAN RENEWAL: THE RECORD AND THE CONTROVERSY (J. Wilson, ed. 1966) at 359 and Hartman, *The Housing of Relocated Families*, 30 J. Am. Inst. Planners 266 (1964)

10. A Massachusetts statute enacted in 1639 granted authority to lay out roads, "provided always it occasioned not the pulling down of any man's house, or laying open any garden or orchard." 1 Nichols, EMINENT DOMAIN § 1.22 [2] (1964)

tremendous recent increases in urban populations metropolitan facilities have become overloaded, the central cities increasingly blighted, and large-scale government programs have been required to physically rehabilitate the urban environment. In their rush to make the necessary physical improvements, governments at all levels neglected the needs of the persons displaced.[11] Typically, government officials treated statutory relocation duties as unimportant preliminaries to the more dramatic tasks of constructing the improvements; displacees were regarded "as unfortunates to whom nothing is owed, but to whom something might be given."[12] As problems of displacement and relocation were compounded, they finally began to receive serious study on the federal,[13] state[14] and municipal[15] level.

In the early 1960's, during a period of intensive construction of Federal-aid highways, it began to appear that the

---

11. National Commission on Urban Problems, *supra.*, n. 5, p. 153.

12. Note, *The Interest of Rootedness: Family Relocation and an Approach to Full Indemnity*, 21 Stan. L. Rev. 810, 803-804 (1969).

13. See, e.g., Select Subcommittee on Real Property Acquisition, Committee on Public Works, House of Representatives, 88th Cong., 2d Sess., *Study of Compensation and Assistance for Persons Affected by Real Property Acquisition in Federal and Federally Assisted Programs* (Comm. Print 1964); U.S. Advisory Commission on Intergovernmental Relations, *Relocation: Unequal Treatment of People and Businesses Displaced by Governments* (1965); *Highway Relocation Assistance Study*, supra., n. 5.

14. In 1965 the California Legislature commissioned the California Law Revision Commission to study condemnation and relocation assistance. Cal. Stats.1965, res. ch. 130, p. 5,289. In part as a result of that study, the Legislature recently enacted *Highway Relocation Assistance Study, supra.*, n. 5.

15. See, e.g., Panuch, *Relocation in New York City*, (1959), which was commissioned by the Mayor of New York in 1957.

highway program was having a disproportionately adverse effect on persons forcibly displaced from housing in the path of proposed highways and was otherwise imposing intolerable burdens on certain urban communities and neighborhoods. The persons who thus suffered from the highway program were invariably poor and frequently members of racial minority groups. Thus, in enacting the Federal-Aid Highway Act of 1966, Congress directed that a study be made of the relocation problem with special emphasis on the adequacy of relocation payments and assistance rendered.[16] The resultant *Highway Relocation Assistance Study* was submitted by the DOT to Congress in July, 1967.[17] The *Study* indicated that about 168,000 individuals, families, businesses, farmers and non-profit organizations would be displaced during the three-year period commencing July 1, 1967. About 23 percent would be located in rural areas and 77 percent in urban areas. It showed that such prospective displacees tended to occupy low-cost housing.[18] In this connection, the *Study* also pointed out that "[m]any State highway departments reported that a major difficulty in relocating low or moderate income families is the shortage of low-rent housing, "either public or private."[19]

---

16. Public Law 89-574, 89th Cong., Sept. 13, 1966.

17. *Supra.*, n. 5.

18. "Estimates reveal that the greater number of displacements will involve the midrange or lower cost housing." *Ibid.*, p. 6. According to figures contained in the *Study*, 86,154 of the individuals and families to be displaced owned their own homes; 60,796 were tenants. Values of the 86,000 residential properties to be taken were: 27% at $6,000 or less; 46% at $6,000 to $15,000; and 27% at over $15,000. Rental paid by the 61,000 tenants to be displaced were: 41% at less than $60 per month; 43% at $60 to $110 per month; and 16% at over $110 per month. *Ibid.*, p. 43.

19. *Ibid.*, p. 6.

The relocation problem figured prominently in the congressional hearings on the Federal-Aid Highway Act of 1968 and related legislation. Moreover, during the course of such hearings, Francis C. Turner, then Director of the Bureau of Public Roads and now Federal Highway Administrator, disclosed that the 1967 *Highway Relocation Assistance Study* had under-estimated the number of displacements from housing that would be caused by the construction of highways during 1967-1970. Mr. Turner stated that "in fiscal 1968, the Federal-aid highway program alone effected some 33,000 displacements. During the present fiscal 1969 we anticipate about 56,000 displacements in this program."[20]

The magnitude and gravity of the relocation problem was indicated also by Lowell K. Bridwell, then Federal Highway Administrator, who in 1968 stated before a Congressional committee that:

> ". . . relocation assistance, in my opinion, is one of the most serious problems facing us in the Highway Administration and the Bureau of Public Roads, and one of the most serious problems facing the progress of the Federal-aid highway program . . . . Without question, I think any rational examination of the problems that we face in the progress of the Federal-aid highway program has to have as one of its big parts the problems of displacing persons . . . .
>
> • • • • • • •
>
> "Frequently, homeowners who must relocate face higher costs than they had formerly. In some cases, this results because there is no suitable housing comparable in price to what these owners left. This seems likely to be the case for many of those to be relocated from highway rights-of-way. . . .
>
> • • • • • • •

20. *Hearings* before the Subcommittee on Intergovernmental Relations of the Committee on Government Operations, U.S. Senate, on S.1, the Uniform Relocation Assistance and Land Acquisition Policies Act of 1969, U.S. Senate, 91st Cong., 1st Sess., p. 216.

"How serious a problem relocation may be for residents depends on such matters as their age, income and race and on the amount and cost of vacant land and replacement housing in the area. In one study of elderly homeowners, a majority of the resettled owners stated that the displacement had adversely affected their financial position.[21]

The Federal-Aid Highway Act of 1968, 23 U.S.C. § 501 *et seq.*, (also known as the Highway Relocation Assistance Act of 1968, and hereinafter referred to as the "1968 Act") was a direct response to the relocation problem and is entirely addressed to its alleviation. The Committee Report which accompanied the Senate bill which was to become the 1968 Act, stated the results of Senate Hearings on the bill as follows:

"Hearings began on December 14, 1967, and were concluded on May 28, 1968. During the 12 days of hearings, 36 witnesses were heard. These witnesses included officials of various Federal agencies; officials from State and local governments and agencies; representatives of the engineering, highway and urban planning, and architectural professions, sociologists and others from the academic world, as well as individuals from other interested groups.

"As the hearings progressed it became obvious that the same range of problems was being identified and discussed by each witness. It also became apparent that these problems fell into [the same areas] . . . ."

"*The most pressing of these problems and the one most deserving of the immediate attention of the Congress in the committee's view is the inequitable treatment of persons or businesses displaced by highway construction.* Accordingly, the committee has proposed

21. Hearings before the Subcommittee on Intergovernmental Relations of the Committee on Government Operations, U.S. Senate, on S.698, S.735, S.458 and S.2981, 90th Cong., 2nd Sess., pp. 425-427.

legislation, . . . as reported, which will aid significantly in reducing the hardship of those who suffer private injury for the public benefit.

• • • • • • •

"The evidence showed . . . that, *because urban interstate highways often go through rundown, dilapidated, low-income, or so-called disadvantaged areas, those persons least able to afford dislocation are frequently the ones who are forced to move by our highway programs.*

"In this regard it was pointed out that *often when persons are displaced from these areas there is no housing or replacement property available for their relocation. People are thus forced to move, but have no place to go; or if other housing or replacement housing does exist, it is usually well beyond their financial capabilities.* The evidence clearly shows that there is a definite need for procedures which provide for comparable replacement housing and property *at the time such displacement occurs.*"[22] (Emphasis added.)

In enacting the 1968 Act, Congress included the following "declaration of policy" in the first section thereto (23 U.S.C. § 501):

> Congress hereby declares that the prompt and equitable relocation and reestablishment of persons, businesses, farmers, and non-profit organizations displaced as a result of the Federal highway programs and the construction of Federal-aid highways *is necessary to insure that a few individuals do not suffer disproportionate injuries as a result of programs designed for the benefit of the public as a whole.* Therefore, Congress declares that relocation payments and advisory

22. Report of the Committee on Public Works, U.S. Senate, to accompany Senate Bill No. 3418, the Federal-Aid Highway Act of 1968. Report No. 1340, 90th Cong., 2nd Sess., June 28, 1968, pp. 5-7.

> assistance should be provided to all persons so displaced in accordance with the provisions of this title. (Emphasis added.)

In order to effectuate this declaration of policy, Section 502 of the 1968 Act provides that the Secretary of the DOT shall not approve any Federal-aid highway project which will cause the displacement of any person or business unless he received "satisfactory assurances" from the State highway department that "fair and reasonable relocation and other payments shall be afforded displaced persons";[23] that "relocation assistance programs . . . shall be afforded to displaced persons";[24] and, most important of all, that:

> within a reasonable period of time prior to displacement there will be available, to the extent that can reasonably be accomplished, in areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of the families and individuals displaced, decent, safe, and sanitary dwellings, as defined by the Secretary, equal in number to the number of and available to such displaced families and individuals and reasonably accessible to their places of employment.[25]

Section 508 of the 1968 Act requires each state to provide "a relocation advisory assistance program" which shall include such measures, facilities or services as may be necessary or appropriate in order "to determine the needs, if any, of displaced families and individuals . . . for relocation

---

23. 23 U.S.C. § 502(1).

24. 23 U.S.C. § 502(2).

25. 23 U.S.C. § 502(3). As is discussed *infra*, n. 75, this statute, like a number of others pertaining to displacement from various federal programs, was modelled after and is almost identical to the federal statute governing urban renewal relocation. 42 U.S.C. § 1455(c)(1).

assistance,"[26] and to assure that the requirements of Section 502 can be met.

Pursuant to specific statutory authorization,[27] the Secretary of the DOT issued detailed regulations which define and expand the provisions of the above statutes. Initially these regulations were contained exclusively in DOT Instructional Memorandum ("IM") 80-1-68, dated September 5, 1968, issued two weeks after the effective date of the 1968 Act. Thereafter, IM 80-1-68 was amended on several occasions, primarily to make certain adjustments in provisions relating to relocation payments[28] and to conform other provisions to requirements of the Civil Rights Act of 1968.[29]

These fairly enlightened relocation requirements have unfortunately had little effect in the actual administration of the federal-aid highway program. Recent hearings before the House Committee on Public Works[30] revealed that in the informed opinion of the independent experts who testified, the DOT had "engaged in, and knowingly tolerated, a pattern of pervasive evasion" of the relocation statutes.[31]

---

26. 23 U.S.C. § 508(a).

27. 23 U.S.C. § 510(a)(b).

28. On October 2, 1968, paragraph 9c(2) of the IM was revised to make certain owner-occupants eligible for a payment of up to $4,500 for use as rent supplement or down-payment on the purchase of a dwelling.

29. On November 15, 1968, various provisions of paragraph 5 of the IM were revised to require that the replacement housing to be provided displacees must be "available to persons without regard to race, color, religion or national origin." See, e.g., IM 80-1-68, paragraph 5a(5).

30. Hearings before the Committee on Public Works, House of Representatives, 91st Cong., 1st and 2nd Sess., on H.R. 14898, H.R. 14899, S.1 and related bills.

31. *Ibid.*, Statement of Edgar S. Cahn, pp. 370-379. Dr. Cahn's statement contained the following conclusion:

Similarly, a comprehensive and heavily documented report on relocation recently issued by a citizens organization in Washington, D.C. also concluded that the DOT and HUD had "lawlessly" and consistently ignored federal relocation requirements.[32] The DOT's noncompliance with federal law and its own regulations in connection with highway relocation has thus proved remarkably similar to the dismal and

---

The history of statutory relocation requirements—twenty years of them—is that they are ignored, they are evaded, they are not enforced. Codification of the hodgepodge that now exists and creation of a uniform procedure drawn from the best features of various agencies will not and cannot, standing by itself, change the fundamental historical fact that the Executive branch pursues a more fundamental relocation procedure:

"See no evil; hear no evil; speak no evil."

For, let us be very candid, the Executive branch—and particularly HUD and DOT—have long engaged in, and knowingly tolerated, a pattern of pervasive evasion of statute after statute, congressional mandate after congressional mandate, and court case after court case.

The record leaves no room for doubt regarding relocation requirements. For the past twenty years there has been a pattern of official lawlessness on the part of the Federal Government which must be arrested.

It can hardly be said that Congress has been coy or ambiguous regarding the duty of the federal government and the priority importance it assigned to adequate relocation. On six separate occasions Congress has stated and then restated its wishes, each time in more stringent, explicit and mandatory terms.

See also statement of Yale Rabin, urban transportation planning consultant and member of the American Institute of Planners, *Ibid.*, pp. 479-485; and statement of Gerald P. Norton, first vice president, Metropolitan Washington Planning and Housing Association, *Ibid.*, p. 187.

32. *The Legal Lawbreakers: A Study in Official Lawlessness Regarding Federal Relocation Requirements,* Citizens Advocate Center (Washington, D.C., July, 1970) See also, Roberts, *Highway Relocation Planning and Early Judicial Review,* 7 Harv. Jour. on Legis. 179, 180 (1970).

extraordinarily well documented record of non-enforcement of almost identical urban renewal relocation requirements.[33]

The inability of the DOT to compel state highway departments to comply with the relocation requirements of the 1968 Act and implementing regulations soon become apparent, not only to independent observers and the affected public, but as well to some senior federal Highway officials.[34] In a press conference on February 16, 1970, reported in the *Wall Street Journal*, Secretary Volpe announced that "Federal efforts will be stepped up to insure that the 1968 highway laws' provisions for decent housing are enforced" and that "the availability of adequate replacement housing, either already built or planned, must be assured for initial federal approval of any [highway] project, and the new housing must be built before construction is authorized."[35]

---

33. See, e.g., Report to the Congress by the Comptroller General of the United States: *Opportunity to Improve Allocation of Program Funds to Better Meet the National Housing Goal* (October 2, 1970); Tondro, *Urban Renewal Relocation: Problems in the Enforcement of Conditions on Federal Grants to Local Agencies*, 117 U. Pa. L. Rev. 183 (1968); Note, *Urban Renewal: Problems of Minimizing and Preventing Urban Deterioration*, 71 Harv. L. Rev. 504 (1959); Anderson, *The Federal Bulldozer: A Critical Analysis of Urban Renewal*, 1949-1962 (MIT Press 1964); Greer, *Urban Renewal and American Cities* (Bobbs-Merrill, 1965). See also *Norwalk CORE v. Norwalk Redevelopment Agency*, 395 F. 2d 920 (2d Cir. 1968); *Powelton Civic Home Owners Association v. Dept. of Housing and Urban Dev.*, 284 F. Supp. 809 (E.D. Pa. 1968); and *Western Addition Community Organization v. Weaver*, 294 F. Supp. 433 (N.D. Cal. 1968).

34. The fact that the DOT was running into "revolt" by state highway departments disinclined to comply with new federal hearing procedures was noted by Alan S. Boyd, then Secretary of Transportation, at Congressional hearings. See *Hearings* before the Subcommittee on Roads of the Committee on Public Works, U.S. House of Representatives, 90th Cong., 2nd Sess., on H.R. 17134 and Related Bills, May 23, 1968, pp. 234-235.

35. *Wall Street Journal*, February 17, 1970, p. 4, col. 2. This article also quotes "department sources" as adding that: "In many instances . . . highway projects have moved along without replacement housing being made available to those whose homes are in a road's path, or the quality of replacement housing provided has been low." *Ibid.* The Wall Street Journal article is reproduced in *Hearings* before the Committee on Public Works, House of Representatives, *supra*, n. 30, p. 478.

He added that,

> . . . in accordance with the Civil Rights Act of 1968, efforts will be made to see that all replacement housing is fair housing, meaning open to all persons regardless of race, color, religion, national origin or sex, under the new Department policy.[36]

Two months later, on April 6, 1970, Secretary Volpe convened another press conference at which he was reported as "insisting that any highway projects that would demolish houses be *held up* until decent replacement housing is assured."[37] Less than a week later, on April 10, 1970, the Secretary put the power of his office behind his public statements by issuing DOT *Circular Memorandum* dated April 10, 1970 entitled *Relocation Assistance-Availability of Replacement Housing.*[38] This Circular Memorandum, which by its terms applies to all Federal-aid highway projects authorized prior to May 1, 1970 on which displacement has not been completed, states in material part as follows (emphasis added):

---

36. *Ibid.* The article also ascribes to Department of Transportation "sources" the explanation that "this means, for example, that if a Negro is forced to move from a black ghetto because of a new highway and doesn't want to move into another all-black area because he's concerned that the homes may be low-grade ones, he must be provided with integrated housing."

37. Wall Street Journal, April 7, 1970, p. 1, Col. 1 (Emphasis added.) See also Memorandum of Secretary of Department of Transportation: *Implementation of Replacement Housing Policy*, January 15, 1970, and statement of Frank C. Turner, Administrator of the Federal Highway Administration, at *Hearings* before the Subcommittee on Roads of the Committee on Public Works, House of Representatives, 91st Cong., 2nd Sess., on H.R. 16788 and related bills, p. 995.

38. This Circular Memorandum is the one referred to below in the dissenting opinion of Circuit Judge Sobeloff, 429 F. 2d 423 at 425 n. 5, although Judge Sobeloff inadvertently noted the date of the subject Memorandum as March 27, 1970. In fact, March 27th was the date of the "White Circular Memorandum" which was superseded by the Circular Memorandum of April 10th.

The division engineer shall not authorize any phase of construction (clearance of right-of-way regardless of of how performed is considered to be a construction phase insofar as this memorandum is concerned) which would require the displacement of individuals or families, *or permit the dislocation of individuals or families on any such project or on any project already authorized;* until such time as the person being relocated has either by himself obtained and has the right of possession of adequate replacement housing or the State offers him adequate replacement housing which is available for immediate occupancy.

Such replacement housing shall be:

a. Fair housing—open to all persons regardless of race, color, religion, sex, or national origin.

b. In areas not generally less desirable in regard to:
   1. Public utilities
   2. Public and commercial facilities

c. Available at rents or prices within the financial means of the families and individuals displaced.

d. Decent, safe and sanitary.

e. Reasonably accessible to the displacees' places of employment.

f. Adequate to accommodate the displacee.

Since issuing the April, 1970 regulations, the Secretary has publicly testified that "[t]he construction of urban freeways has been a disruptive force in some of our urban areas and perhaps accelerated the process of central city decay."[39] This is understatement—particularly in view of the fact that the billions upon billions of dollars regularly

39. *Hearings* before the Subcommittee on Roads of the Committee on Public Works, House of Representatives, *supra*, n. 37, p. 948.

appropriated for federal-aid highways[40] far exceed the funds available for urban redevelopment and subsidized housing programs. These latter programs are thus unable to repair the human and physical damage wrought by the overfinanced bulldozers of state highway departments.

There are a number of obvious reasons for the failure of the DOT and state highway departments to even approach compliance with the relocation requirements. First, as in the case of federal programs administered by other executive departments,[41] the DOT is in the position of relying almost entirely on state officials not only to develop the specific standards implementing the relocation requirements, but also to provide the information necessary to determine in advance whether the statutory criteria can be met. The success of these state officials will depend, not upon their success in relocating displacees, but in completing highway projects as rapidly as possible. To compound the problem, the DOT also depends upon state highway officials for the information necessary to evaluate state compliance with the standards in carrying out reloca-

---

40. The cost of completing the Interstate System, as submitted to Congress in 1968, was $56.5 billion. Report of the Committee on Public Works, U.S. Senate, *supra.*, n. 22, p. 3. A total of $5.044 billion was made available for obligations of the federal-aid highway program for only the nine month period from July 1, 1969 through April 1, 1970. CCH. URBAN AFFAIRS REPORTS, ¶ 18,675. A total of $1.25 billion is available for obligations during just the first quarter of fiscal 1971. *Ibid.*, ¶ 18,759. The colossal cost of the highway program may also be illustrated by the fact that 20 miles of planned highway in Chicago will cost approximately $1 billion. *Hearings* before the Subcommittee on Roads of the Committee on Public Works, House of Representatives, *supra*, n. 38, p. 955. The distribution of funds among the states is published in DOT *Instructional Memorandum* 30-5-70.

41. See, Tondro, *supra.*, n. 33, p. 198.

tion.[42] This wholesale turnover of the highway program to state officials likely to adopt a biased view of the relocation problem[43] reflects the DOT's response to pressures on itself. The state highway department, not politically impotent or racially oppressed displacees, is the DOT's recurring "client"; without state highway departments' willingness to undertake further projects, certain constituent agencies of the DOT would find it difficult or impossible to continue operating.[44] But by identifying so closely with one point of view, the DOT in its supervision of relocation, has become yet another regulatory agency now controlled by the very interests it was designed to regulate.

A further reason for the failure of enforcement of the relocation requirements emerges out of the fact that "[t]hose involved with the problem on the state level are usually state highway department engineers with practically no training or experience in understanding and dealing with the complex social and economic problems of the displaced person."[45] If officials of local redevelopment agencies, who are far more experienced with the problems of relocation[46] and more regularly concerned with it, can

---

42. See IM 80-1-68, paragraph 7a(3) and 7b(1).

43. As stated in *Hartman, supra,* n. 9, at 280:

> [O]ne must question whether local authorities are free to judge and report on the results of their relocation operations in an objective and impartial manner. In effect, the local agency may have no choice but to issue extremely positive relocation reports: anything less than this might produce legal, political, and technical conflicts and could slow up or curtail the entire rebuilding effort, which is the principal goal of the authority and its program.

44. See Roberts, *supra.*, n. 32, at 191.

45. *Ibid.*, pp. 181-182.

46. The urban renewal relocation requirements were initially enacted as part of the Housing Act of 1954, P.L. 88-560, 78 Stat. 769, 786.

be lax with the rights of displacees,[47] it is unlikely that highway officials are apt to be more assiduous in their responsibilities. Because of their inexperience and desire to avoid matters which may hinder or delay the construction of a highway, it has been suggested that highway officials "may attempt to gain initial approval for their proposed projects by submitting false or obsolete data concerning relocation to the [DOT]."[48]

ARGUMENT

I. The Federal Relocation Requirements Apply to Benefit and Protect All Residents of a Federal-Aid Highway Project Not Yet Displaced on the Date of Their Enactment.

Amicus will not here reiterate the compelling arguments amply set forth in petitioners' brief and in Judge Sobeloff's dissenting opinion below in support of application in this case of the 1968 Act and implementing regulations. Such application is warranted, however, not only by the plain statutory and regulatory language, the legislative history and relevant decisional law, but as well by the

47. See *Tenants and Owners in Opposition to Redevelopment v. Romney*, No. C-69-324 (N.D. Cal. April 29, 1970) where the court noted that "[t]he evidence . . . is overwhelming in establishing that [officials of HUD and the local redevelopment agency] have not met the mandate of Congress laid down in [the urban renewal relocation statutes . . . which] make it abundantly clear that Congress intended residents of blighted areas to be beneficiaries, not victims, of urban renewal." Slip Opinion, pp. 31-32. See also, *Norwalk CORE v. Norwalk Redevelopment Agency*, 395 F. 2d 920 (2d Cir. 1968); *Powelton Civic Home Owners Association v. Dept. of Housing and Urban Dev.*, 284 F. Supp. 809 (E.D. Pa. 1968) and *Western Addition Community Organization v. Weaver*, 294 F. Supp. 433 (N.D. Cal. 1968).

48. Roberts, *supra.*, n. 32, p. 180. The practice of submitting inaccurate and often deliberately misleading data concerning relocation is authoritatively reported as widespread among local redevelopment agencies. See, e.g., Tondro, *supra.*, n. 33, p. 194, and authorities therein cited and discussed.

fact that non-application of the law in this case would have a terrible impact nationally upon thousands of impoverished displacees—an effect not intended by Congress.

During its deliberations on the 1968 Act, Congress understood that the planning and construction of federal-aid highway projects was an exceedingly lengthy process and that, for example, 8 to 10 years may elapse between the initial proposal of a particular project and actual construction.[49] During this protracted period the state highway department must seek and obtain from the DOT "corridor" or route approval and, subsequently, design approval. Each of these approvals can be given only after the highway department has held appropriate public hearings.[50] Thereafter, the state must submit "plans, specifications and estimates" limited to the acquisition of right-of-way.[51] Lastly, the DOT must approve new and different "plans, specifications and estimates" regarding the construction stage.[52] It is this last approval which constitutes "final approval." Such approval was never given with respect to I-77, and that highway project has therefore never been finally approved. Therefore, the statement in the District Court's opinion that the I-77 project "was finalized some five years ago"[53] is legally unfounded and misleading.

---

49. Report of the Committee on Public Works, U.S. Senate, *supra.*, n. 22, p. 10. On June 10, 1970, Secretary Volpe testified at congressional hearings that urban interstate projects, such as I-77, would normally require 6 years of planning and construction. HEARINGS before the Subcommittee on Roads of the Committee on Public Works, House of Representatives, *supra.*, n. 37, p. 979.

50. DOT *Policy and Procedure Memorandum 20-8*

51. *DOT Policy and Procedure Memorandum 21-7.*

52. For a detailed description of some of the factual and legal distinctions between corridor approval, design approval, acquisition approval and construction or "final" approval, see *D.C. Federation of Civic Associations v. Volpe*, 316 F.Supp. 754, 774 *et seq.*, (D.D.C. 1970)

53. 314 F. Supp. at 31

It must be emphasized in this connection that the majority of highway displacements invariably occur during the actual construction stage. (And it is for this reason that numerous prospective displacees are still resident in the Triangle area notwithstanding the fact that the DOT approved acquisition of right-of-way for I-77 approximately four years ago.) Thus it is highly significant that, pursuant to paragraph 7b of IM 80-1-68, the state highway department's relocation plan may be submitted to the federal division engineer just prior to proceeding with construction.[54]

Since the DOT has not granted construction approval for the subject portions of I-77 on the effective date of the 1968 Act, and since no residents of the Triangle area had been displaced at that time, application of paragraphs 5 and 7 of IM 80-1-68 would have imposed no serious burden on the project. In view of the fact that completion of the project will, in any event, probably require many years, delay of a few months still would be a relatively small price to pay for the protection thus afforded displacees.

On June 28, 1968, the date the 1968 Act was reported out of the Senate Committee, there were 8,500 federal-aid highway projects underway which, like the I-77 project, had received design or right-of-way acquisition approval but were not yet in the construction stage.[55] Collectively

---

54. Paragraph 7b states in material part as follows:
Right-of-Way Acquisition and/or Construction Stage.
The State highway department, *prior to proceeding with* right-of-way negotiations and/or *construction* shall furnish the following information for review and approval by the division engineer. . . . (Emphasis added)

55. Report of the Committee on Public Works, U.S. Senate, *supra.*, n. 22, p. 3.

these projects will cause (or may in part already have caused) over 100,000 residential displacements.[56] The majority of such displacees were low-income persons,[57] precisely those of pre-eminent concern to Congress.[58] Therefore, had Congress intended to deny the benefits of the 1968 Act to displacees of on-going projects, it must be assumed such an intent would have been expressed in the statute—as it was expressed in similar statutes on analogous occasions.[59] Since such an intent was not expressed, it must be presumed not to have existed.

Not only does the 1968 Act contain no language restricting application to highway projects initially commenced after its effective date, but the regulations promulgated pursuant to the Act justify the conclusion that such restriction was never even contemplated by the DOT. The terms of Paragraph 2b(2) and (3) of DOT *Instructional Memorandum 80-1-68* (which state that provisions of the IM

56. The *Highway Relocation Assistance Study*, *supra.*, n. 5, stated, at p. 5, that 146,950 families and individuals would be displaced during the three-year period commencing July 1, 1967. In view of the length of the highway planning process, it must be assumed that the projects causing these displacements received most preliminary approvals prior to August 23, 1968.

57. *Ibid.*, p. 6.

58. See 23 U.S.C. § 501 and Report of the Committee on Public Works, U.S. Senate, *supra.*, n. 22, p. 7, wherein the Committee noted that "because urban interstate highways often go through rundown, dilapidated, low-income or so-called disadvantaged areas, those persons least able to afford dislocation are frequently the ones who are forced to move by our highway programs."

59. As noted elsewhere by petitioners, Congress specifically prohibited the application of the 1962 highway relocation amendment to projects approved prior to its enactment. 23 U.S.C. § 133(e). And in adopting relocation requirements for urban renewal which are very similar to those here at issue, Congress expressly stated that the new requirements did not apply to projects in which HUD had already approved planning grants. See also, § 106(f) and (h) of the Housing Act of 1949, 42 U.S.C. 1455(f) and (h), which pertain to replacement housing facilities for persons displaced by urban renewal projects.

are applicable to projects "authorized" before August 28, 1968 on which individuals and families have not been displaced) make it eminently clear that these regulations were intended to apply to all highway projects from which, as of the effective date of the statute residents were yet to be displaced, regardless of when they received initial federal authorization. This conclusion is further supported by the terms of Paragraph 5a of IM 80-1-68 which provides that no state highway department shall be authorized to proceed with "any *phase* of any project which will cause the displacement of any person. . . . ," until it has furnished satisfactory assurances concerning relocation. (Emphasis added.) The first sentence of paragraph 5b of the IM, which standing alone might warrant the opposite conclusion, is immediately qualified in the next following sentence, which provides that the state "will pick up the sequence at whatever point it may be in the acquisition program" on the issuing date of the regulations. On September 5, 1968 (the date of issuance of IM 80-1-68) West Virginia highway authorities had not received federal authorization to proceed with construction of the subject portions of I-77, the "phase" which would cause displacement, and the project was still in the acquisition stage. No residents of the Triangle area had been forcibly displaced at that date. The conclusion is therefore inescapable that the relocation requirements were intended to apply with full force to the I-77 project as part of the "sequence" to be "picked up" at whatever point it may have been in the acquisition stage.

Moreover, as petitioners have shown, even indulging the unwarranted assumption that the first sentence of paragraph 5b of the IM should be read as if in a vacuum to justify non-application, the issuance of DOT *Circular Memorandum dated April 10, 1970,* while the appeal below was

pending, would still operate to effectively require application. *Thorpe v. Housing Authority of the City of Durham.*[60]

The instant appeal is not the first in which an appellate court has been asked to rule upon application of the 1968 Act and implementing regulations to a particular project commenced prior to their enactment. In *D.C. Federation of Civic Associations v. Volpe,*[61] which involved the Three Sisters Bridge project in Washington, D.C., one of the issues confronting the Court of Appeals for the District of Columbia was whether a so-called "design public hearing" required by new DOT regulations must be held in view of the alleged fact that the DOT had given design approval prior to the effective date of the regulations. The district court never reached this issue, since it granted summary judgment for appellees after concluding that the alleged violations of the 1968 Act and regulations would not be considered because "Congress intended that the District of Columbia commence construction of the Bridge project as soon as possible, and that no further planning or hearing requirements of Title 23 need be complied with."[62] The court of appeals reversed this lower court decision and remanded for a factual determination whether location approval was obtained prior to the effective date of the regulations. Circuit Judge Wright, writing for the majority, pointed out that

> Since these road projects may irreparably affect or destroy basic rights—for example, the basic right of a citizen to live in his home—we must carefully and meticulously scrutinize any proposal which would deny to some their federally created right to influence the course of a highway in their neighborhood to determine

60. 393 U.S. 268

61. Civil No. 23,870 (D.C. Cir. April 6, 1970)

62. *Ibid.*, Slip Opinion, p. 2

whether this discrimination is "necessary to the accomplishment" of the congressional objective—a federally financed interstate highway system.[63]

In a separate concurring opinion Judge Bazelon recognized that there was some ambiguity in the 1968 Act as to whether particular provisions were intended to apply to the Three Sisters Bridge Project. He agreed that the ambiguity should be resolved in favor of application, not only because there were no "explicit criteria" in the statute justifying non-application to that particular project, but as well because such an interpretation

> . . . avoids treating District residents less favorably than all other citizens with respect to the federal highway system. . . . Apart from constitutional considerations, we should not lightly presume that Congress has deprived District residents of an opportunity afforded to all other citizens, at least in the absence of the clearest legislative mandate, which is lacking here.[64]

While the facts in the *D.C. Federation* case are not perfectly analogous to those here presented, the reasoning of Circuit Judges Wright and Bazelon is nevertheless highly relevant. Respondents would deny to residents of the Triangle protections and benefits which may well effect their basic right to decent, safe and sanitary housing. This Court has frequently recognized that adequate housing is "a necessary of life."[65] And by determining where one lives, housing also determines access to jobs, education and recreation. Therefore, where, as here, a statutory scheme

---

63. *Ibid.*, Slip Opinion, p. 14

64. *Ibid.*, Slip Opinion, pp. 2-3 (separate concurring opinion of Bazelon, J.)

65. *Block v. Hirsh*, 256 U.S. 135, 156; *Shapiro v. Thompson*, 394 U.S. 618,627.

involves such a fundamental human need, this Court must "carefully and meticulously" scrutinize a proposed interpretation which would deny to many thousands of poor persons the federally created right to adequate relocation housing.[66]

It is interesting to note that upon remand of *D.C. Federation* the district court also rejected the statutory interpretation again sought by DOT officials. After considering at length the extensive testimony of such officials, including that of Secretary Volpe himself, and after recognizing "the deference which it must give to the interpretation of administrative regulations by the administrative officials who promulgate and enforce them",[67] the court nevertheless rejected their proposed interpretation as "unreasonable and inconsistent with the purpose of [the regulations.]"[68] In effect, then, both the court of appeals and the district court considered the basic rights of the affected public too important to be ignored on the basis of highly technical, and indeed specious, arguments concerning the purported

66. As also pointed out by Judge Wright:

> If we were to accept appellees interpretation of Section 23, we would be confronted with difficulties, possibly of constitutional magnitude. The provisions [of the 1968 Act] listed above are the essential safeguards which Congress has established, on a nationwide basis, to ensure that massive freeway projects are not constructed unless there has been a good faith effort on the part of the state and local planners to take community needs and resources into consideration . . . . The Secretary of Transportation is charged with overseeing the planning and may not approve road projects, thus allowing them to be built with federal funds, until he finds that all these considerations have been properly taken into account. *D.C. Federation of Civic Associations v. Volpe*, supra, Slip Opinion, pp. 5-6

67. *D.C. Federation of Civic Associations v. Volpe*, 316 F.Supp. 754, 784 (D.D.C. 1970)

68. *Ibid.*, 316 F.Supp. at 785.

"non-retroactivity" of regulations designed to protect the public interest. This Court must do no less.

II. In the Absence of a Satisfactory Relocation Plan, Evidence of a State Highway Department's Ability to Provide Adequate Replacement Housing for Particular Displacees Is Factually and Legally Irrelevant.

In proceedings below the district court apparently relied upon the testimony of federal and state highway officials that "appropriate" replacement housing could be found, and that "no one will be displaced unless suitable (i.e., decent, safe, and sanitary) and lawful relocation housing is available . . ."[69] The district court also concluded that "adequate relocation housing, on an open racial basis, will be available in the Charleston area for an orderly relocation of the displacees from the interstate highway corridor."[70] These statements are not only erroneous as a matter of fact, as petitioners demonstrate, but are judgments which must in the first instance be made by the Secretary of the DOT, not the courts.[71] Moreover, and

---

69. 314 F. Supp. at 30.

70. *Ibid.*, at 31

71. The proper function of the courts in relocation cases such as this was stated in *Western Addition Community Organization v. Weaver*, 294 F. Supp. 433, 441 (N.D. Cal. 1968):

> This injunctive relief does not mean that this court is presumptuously attempting to administer the complexities of urban redevelopment. That is not the function of the court nor is the court administratively equipped to do so. Nor does it mean that this court is attempting to substitute its judgment for that of the Secretary concerning the "satisfactoriness" of the local agency's relocation plan.
>
> Our decision simply means that the court can and should see to it that the Secretary complies with the requirements of the federal statute, and his own regulations, not merely in form but in substance, and that the administrative discretion vested in him by law is not arbitrarily abused, as in this case, but is reasonably exercised with some substantial basis in fact to support it. Such is the traditional function of the court upon review of administrative action of the kind here involved.

perhaps most important, the district court did not base its judgments about the availability of relocation housing on relevant statutory criteria.

The 1968 Act was designed, not simply to insure that displacees were adequately rehoused, but as well to insure that such relocation did not generate untoward repercussions in local housing markets. It is for this reason that the regulations require development of a "relocation program plan"[72] which, among other things, takes into consideration concurrent displacement from other federal, state or local programs and private activities as well as competing demand generally.[73]

Paragraph 7 of IM 80-1-68, which pertains to planning for the relocation program, relates in many respects to Section 508 of the 1968 Act. This section, like Section 502, was modelled after Section 105(c) of the Housing Act of 1949,[74] which concerns urban renewal relocation.[75] Because the urban renewal planning, administration, and evaluation guidelines are older, and have received far more judicial attention[76] than those regarding federal-aid highways, the urban renewal cases are highly relevant for

72. DOT *Instructional Memorandum* 80-1-68, para. 7

73. *Ibid.*, para. 7(c)

74. 23 U.S.C. § 1455(c)

75. This early relocation statute was also the model for similar statutes relating to other federal housing programs. See, e.g., 42 U.S.C. § 1415(7)(b)(iii) (public housing); 42 U.S.C. § 3307(a) (demonstration cities program); and 49 U.S.C. § 1606(a) (urban mass-transportation program).

76. See, e.g., *Norwalk CORE v. Norwalk Redevelopment Agency*, 395 F. 2d 920 (2d Cir. 1968); *Powelton Civic Home Owners Civic Association v. Department of Housing and Urban Development*, 284 F. Supp. 809 (E.D. Pa. 1968); *Western Addition Community Organization v. Weaver*, 294 F. Supp. 433 (N.D. Cal. 1968); *Garrett v. City of Hamtramck*, No. 32004 (E.D. Mich. S.D., March 7, 1969) (unreported decision); *Tenants and Owners in Opposition to Redevelopment v. Romney*, No. C-69-324 (N.D. Cal. April 29, 1970); *Talbot v. Romney*, No. 2402 (S.D.N.Y., August 20, 1970).

purposes of interpreting the highway relocation guidelines. Many of the urban renewal relocation cases emphasize that whether a local agency has complied with federal relocation requirements is *not* to be determined solely on the basis of whether it can find adequate replacement housing for particular displacees (and certainly not on the basis of undocumented speculations such as were relied upon below). For example, in *Powelton Civic Home Owners Association v. Dept. of Housing and Urban Dev.*,[77] the court observed that:

> In determining the availability of satisfactory relocation facilities, the Secretary's inquiries will be directed towards the ascertaining of general statistical facts: What are the general conditions in the new housing market? What are the competing demands from other housing consumers? What are the general needs of the displaced families? [citations] The peculiar problems of one individual or of one family within the project site will not be relevant to the Secretary's determination.[78]

As in the context of urban renewal, West Virginia highway officials' purported ability to obtain adequate replacement housing in Charleston for displacees of I-77 is not the sole or even the most important test under the 1968 Act. For even assuming this goal could be achieved, the costs of achieving it might well be to deprive others of housing who are equally in need, drive up rents, decrease mobility, and further impact the Charleston housing market. Unless a state highway department has gathered and evaluated information concerning concurrent displacement and other factors relat-

77. 284 F. Supp. 809 (E.D. Pa. 1968)

78. *Ibid.* at p. 829. See also, *Tenants and Owners in Opposition to Redevelopment v. Romney*, No. C-69-324 (N.D. Cal April 29, 1970) Slip Opinion, p. 31.

ing to the local demand for and supply of housing, there can be no assurance that even the successful relocation of displacees will not create a new housing problem or worsen an existing one.

So far as is shown by the record, respondents have no reliable information on relevant vacancy rates in Charleston; no current information on rent ranges or prices of available housing; no information concerning the amount of available housing which conforms to housing codes and is "decent, safe and sanitary"; no information on the number of otherwise available housing units to be demolished as a result of urban renewal, code enforcement or private development; no information on the proximity of available housing to public transportation; and no information on whether and, if so, how much housing is available without regard to race, color, religion or national origin. Similarly, respondents submitted no accurate and up to date information as to the rent ranges or sale prices which are within the financial means of persons to be displaced from the Triangle; no information on the location of their places of employment; and no information as to special housing needs of particular displacees. Finally, respondents have no data concerning competing demand for available housing generated by concurrent displacement from urban renewal, code enforcement, other government and private activities or simply by the natural increase of demand over supply such as is occurring in most urban areas. Without these findings, which pursuant to the regulations must be submitted to the DOT[79] along with a statement of the basis upon which they were made,[80] neither the Secretary nor

79. DOT *Instructional Memorandum* paras. 7a(1)(2), 7b(1)(2)(3)

80. *Ibid.*, para. 7a(3)

the courts can rationally determine whether displacees can be absorbed into existing and adequate replacement housing without impacting the local housing market. Since this information was never submitted to the DOT, nor presumably even obtained, the district court's judgment that respondents were in "substantial compliance" with the 1968 Act was without any foundation in the record and an abuse of judicial discretion.

On the basis of what they saw as "urban suicide in the Nation's capital"[81] some members of the legislative committee which reported out the House version of the 1968 Act included in the Committee Report their views in opposition to certain provisions in the bill. These included the following dire predictions of the effect highway displacements would have on the city.

> Many thousands of District families will be unnecessarily displaced, and the burden of this forced dislocation will bear heaviest, and cause untold hardship, on low-income and middle-income families. The majority

81. Since 1940, the central city ("Federal City") area has lost one-third of its population. Row houses have been replaced with new highways and parking lots. The city's housing shortage is desperate. More than 60 percent of the central business district is now devoted to highways and off-street storage of motor vehicles.

Throughout the District, 30 percent of the land area is preempted by highways, while only 35 percent is privately owned, tax yielding property. The sprawl generated by past highway construction led to the loss, between 1948 and 1963, of one-fourth of the city's retail establishments. By 1960, over 44 percent of the city's wage earners resided and paid taxes outside of the city.

In return for its investment, the city has received increased smog, more traffic fatalities, a drastic loss of patronage in its public transit system, an ever-worsening housing crisis, and permanent scars on residential neighborhoods and monumental areas where older highways have been widened or new highways forced through to make room for more auto commuters.

Report, together with Minority Views, of the Committee on Public Works, House of Representatives, to accompany H.R. 17134, 90th Cong., 2d Sess., House Report No. 1584, p. 57.

of these families will be nonwhite, and the difficulties they would have in obtaining substitute housing are well known.

The District does not provide any facilities for relocation of these people. Public housing in the District has no room for them, if they are eligible, since there already is a waiting list of many thousands of families. The relocation assistance provided in H.R. 17134 will not solve the housing shortage or make the refugees from Washington's freeways more welcome in the suburbs. These meager bounties cannot begin to pay the highways' cost to the people of the District in dislocation of their lives and destruction of their urban values.[82]

Whether such pessimism about the bill which became the 1968 Act will prove justified remains to be seen. The point, however, is that the evidence before Congress generated serious doubts among many legislators as to whether the relocation provisions of the Act, assuming they would be enforced, were sufficient to protect, not just displacees, but the cities of the Nation.

Of all cities in the United States, the negative effects of highway displacement may be potentially most disastrous in Charleston. Although 1970 census figures show that thirty-three states have greater populations than West Virginia,[83] it was reliably estimated that only eight states had more residential displacements caused by the construction of federal-aid highways during a three-year period just ended.[84] Moreover, Charleston, which is one of the areas in

82. *Ibid.*, p. 58.

83. U.S. Dept. of Commerce, *Commerce Today*, Table "1970 Preliminary Population Count", October 19, 1970, p. 25.

84. *Highway Relocation Assistant Study, supra*, n. 5, Table 6, p. 42. The only states which had more residential displacements are California, Indiana, Maryland, Michigan, Missouri, New Jersey, New York, Ohio, and Pennsylvania. *Ibid.*

the state where the number of displacements is likely to be greatest, has been in the throes of a housing crisis for some time. For example, according to 1960 figures, 48 percent of all housing units in Charleston were in "poverty areas"; 83 percent of such housing consisted of "substandard units" and 69 percent was "overcrowded".[85]

The national urban crisis, exemplified in Charleston, is in no small part compounded of the fact that urban programs have unindlessly ignored the broad problems they create by focusing only on the frequently narrow ones they were designed to cure. In this manner the federal-aid highway program has in the past magnified a national housing problem to an extent unjustified by the production of additional and relatively unnecessary highways. Congress intended to rectify this situation by enactment of the 1968 Act; and in view of the magnitude of the problem which Congress perceived, it clearly intended that the relocation provisions of the Act were to apply to projects where, as in Charleston, displacees and the city might still benefit.

CONCLUSION

For the foregoing reasons, and for additional reasons set forth in the briefs of petitioners and in the dissenting opinion below, it is respectfully submitted that the judgment below should be reversed and the case remanded to the district court with instructions that further displacement be enjoined until respondents have prepared a relocation plan in accordance with law.

Respectfully submitted,

J. Anthony Kline
Kenneth F. Phillips
National Housing and Economic Development Law Project

---

85. Manvel, *Housing Conditions in Urban Poverty Areas*, report prepared for the National Commission on Urban Problems, Research Report No. 9 (Wash., D.C. 1968), Table 8, pp. 14-19 of 101 metropolitan areas in the United States with populations in 1960 of over 250,000, only 25 had worse figures than Charleston in this respect.